



Reprinted  
April 11, 2001

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## ENGROSSED SENATE BILL No. 104

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DIGEST OF SB 104 (Updated April 10, 2001 6:18 PM - DI 106)

**Citations Affected:** IC 16-37; IC 33-9; IC 33-19; IC 34-10.

**Synopsis:** Right to pauper counsel in civil actions. Creates a civil and indigent counsel fund from the former public defense fund to reimburse counties for the cost of representing indigents in civil and criminal cases. Provides for a \$2 civil indigent fee to be added to the cost of a birth certificate; this fee is to be deposited in the civil and criminal indigent counsel fund but may only be used to reimburse counties for expenses related to appointed counsel in civil indigent cases. Eliminates the general duty of a court to provide an attorney for an indigent person in a civil action. Gives a court the discretion to appoint an attorney for an indigent person in a civil action. An attorney appointed to represent an indigent in a civil action may be reimbursed from the civil and criminal indigent counsel fund or from money appropriated to the court. Establishes procedures for the disbursement of money from the civil and criminal indigent counsel fund. Provides that, with the exception of money deposited in the fund from the civil indigent fee, a county may not be reimbursed for the expenses of appointed counsel in civil cases unless all outstanding claims for reimbursement for criminal cases have been paid in full. Makes conforming amendments.

**Effective:** Upon passage.

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### Kenley

(HOUSE SPONSORS — DVORAK, STEELE)

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January 8, 2001, read first time and referred to Committee on Judiciary.  
February 22, 2001, reported favorably — Do Pass.  
February 26, 2001, read second time, amended, ordered engrossed.  
February 27, 2001, engrossed. Read third time, passed. Yeas 49, nays 0.

#### HOUSE ACTION

March 12, 2001, read first time and referred to Committee on Judiciary.  
April 2, 2001, amended, reported — Do Pass.  
April 10, 2001, read second time, amended, ordered engrossed.

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ES 104—LS 6034/DI 51+



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Reprinted  
April 11, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## ENGROSSED SENATE BILL No. 104

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 16-37-1-9 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A local  
3       health department may make a charge under IC 16-20-1-27 for each  
4       certificate of birth, death, or stillbirth registration.

5       (b) If the local department of health makes a charge for a certificate  
6       of death under subsection (a), a one dollar (\$1) coroners continuing  
7       education fee must be added to the rate established under  
8       IC 16-20-1-27. The local department of health shall deposit any  
9       coroners continuing education fees with the county auditor within thirty  
10      (30) days after collection. The county auditor shall transfer  
11      semiannually any coroners continuing education fees to the treasurer  
12      of state.

13      (c) **If the local department of health makes a charge for a**  
14      **certificate of birth under subsection (a), a two dollar (\$2) civil**  
15      **indigent fee must be added to the rate established under**  
16      **IC 16-20-1-27. The local department of health shall deposit the civil**  
17      **indigent fee in the civil and criminal indigent counsel fund**

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**(IC 33-9-14-1) not later than thirty (30) days after collection. Fees deposited in the fund do not revert to the state.**

**(d)** Notwithstanding IC 16-20-1-27, a charge may not be made for furnishing a certificate of birth, death, or stillbirth registration to a person or to a member of the family of a person who needs the certificate for one (1) of the following purposes:

(1) To establish the person's age or the dependency of a member of the person's family in connection with:

(A) the person's service in the armed forces of the United States; or

(B) a death pension or disability pension of a person who is serving or has served in the armed forces of the United States.

(2) To establish or to verify the age of a child in school who desires to secure a work permit.

SECTION 2. IC 33-9-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The commission shall do the following:

(1) Make recommendations to the supreme court of Indiana concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under IC 35-50-2-9, including the following:

(A) Determining indigency and eligibility for legal representation.

(B) Selection and qualifications of attorneys to represent indigent defendants at public expense.

(C) Determining conflicts of interest.

(D) Investigative, clerical, and other support services necessary to provide adequate legal representation.

(2) Adopt guidelines and standards for indigent ~~defense~~ services under which the counties will be eligible for reimbursement under IC 33-9-14, including but not limited to the following:

(A) Determining indigency and the eligibility for legal representation.

(B) The issuance and enforcement of orders requiring the defendant to pay for the costs of court appointed legal representation under IC 33-9-11.5.

(C) The use and expenditure of funds in the county supplemental public defender services fund established by IC 33-9-11.5.

(D) Qualifications of attorneys to represent indigent defendants at public expense.

(E) Compensation rates for salaried, contractual, and assigned

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counsel.

(F) Minimum and maximum caseloads of public defender offices and contract attorneys.

(3) Make recommendations concerning the delivery of indigent defense services in Indiana.

(4) Make an annual report to the governor, the general assembly, and the supreme court on the operation of the ~~public defense civil and criminal indigent counsel~~ fund.

SECTION 3. IC 33-9-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The ~~public defense civil and criminal indigent counsel~~ fund is established to receive court costs or other revenues for county reimbursement and administrative expenses. The fund shall be administered by the division of state court administration of the supreme court of Indiana. **Money deposited in the fund under IC 16-37-1-9 may be used only to reimburse a county for expenses related to the assignment of an attorney to represent an indigent in a civil case under IC 34-10-1-2.**

SECTION 4. IC 33-9-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the ~~public defense civil and criminal indigent counsel~~ fund for an amount equal to fifty percent (50%) of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought under IC 35-50-2-9.

(b) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the ~~public defense civil and criminal indigent counsel~~ fund for an amount equal to forty percent (40%) of the county's expenditures for indigent defense services provided in all noncapital **criminal** cases except misdemeanors.

(c) A request under this section from a county described in IC 33-9-15-1(3) may be limited to expenditures for indigent **criminal** defense services provided by a particular division of a court.

**(d) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the civil and criminal indigent counsel fund for an amount equal to forty percent (40%) of the county's expenditures for civil indigent services under IC 34-10-1-2.**

SECTION 5. IC 33-9-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. If the ~~public defense civil and criminal indigent counsel~~ fund would be reduced

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below two hundred-fifty thousand dollars (\$250,000) by payment in full of all county reimbursement for net expenditures in non-capital **criminal** cases that is certified by the state court administrator in any quarter, the commission shall suspend payment of reimbursement to counties in non-capital cases until the next semi-annual deposit in the ~~public defense~~ **civil and criminal indigent counsel** fund. At the end of the suspension period, the state court administrator shall certify all suspended reimbursement. If the ~~public defense~~ **civil and criminal indigent counsel** fund would be reduced below two hundred-fifty thousand dollars (\$250,000) by payment in full of all suspended reimbursement in non-capital cases, the amount certified by the state court administrator for each county entitled to reimbursement shall be prorated. **However, with the exception of money deposited in the fund under IC 16-37-1-9, the state court administrator may not certify for payment costs arising from the assignment of an attorney to represent an indigent in a civil case unless all reimbursements to counties for expenses incurred in criminal cases can be paid in full.**

SECTION 6. IC 33-9-15-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The board shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal **criminal** defense services to indigent persons:

- (1) Establishing a county public defender's office.
- (2) Contracting with an attorney, a group of attorneys, or a private organization.
- (3) Utilizing an assigned counsel system of panel attorneys for case-by-case appointments under section 9 of this chapter.
- (4) In a county described in section 1(3) of this chapter, establishing a public defender's office for the criminal division of the superior court.

(b) The plan prepared under subsection (a) shall be submitted to the commission.

SECTION 7. IC 33-9-15-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) This chapter does not prevent a court from appointing counsel other than counsel provided for under the board's plan for providing **criminal** defense services to an indigent person when the interests of justice require. A court may also appoint counsel to assist counsel provided for under the board's plan as co-counsel when the interests of justice require. Expenditures by a county for **criminal** defense services not provided under the county public defender board's plan are not subject to



reimbursement from the ~~public defense~~ **civil and criminal indigent counsel** fund under IC 33-9-14.

(b) A judge of a court having criminal jurisdiction may make a written request to the state public defender to provide a qualified attorney for the defense of a person charged in the court with a criminal offense and eligible for representation at public expense if the judge determines:

(1) that an attorney provided under the county public defender board's plan is not qualified or available to represent the person;

or

(2) that in the interests of justice an attorney other than the attorney provided for by the county defender board's plan should be appointed.

The judge shall attach to the request a copy of the information or indictment. Expenditures for representation under this subsection shall be paid by the county according to a fee schedule approved by the commission. These expenditures are eligible for reimbursement from the ~~public defense~~ **civil and criminal indigent counsel** fund.

SECTION 8. IC 33-9-15-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) A county public defender board shall submit a written request for reimbursement to the county auditor. The request must set forth the total of the county's expenditures for indigent **criminal** defense services to the county auditor and may be limited in a county described in section 1(3) of this chapter to expenditures for indigent defense services provided by a particular division of a court. The county auditor shall review the request and certify the total of the county's expenditures for indigent defense services to the public defender commission.

(b) Upon certification by the public defender commission that the county's indigent defense services meet the commission's standards, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of a sum equal to forty percent (40%) of the county's certified expenditures for indigent defense services provided in noncapital cases except misdemeanors.

(c) If a county's indigent defense services fail to meet the standards adopted by the public defender commission, the commission shall notify the county public defender board and the county fiscal body of the failure to comply with the commission's standards. Unless the county public defender board corrects the deficiencies to comply with the standards not more than ninety (90) days after the date of the notice, the county's eligibility for reimbursement from the ~~public defense~~ **civil and criminal indigent counsel** fund terminates at the

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close of that fiscal year.

SECTION 9. IC 33-19-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state six million seven hundred four thousand two hundred fifty-seven dollars (\$6,704,257) for distribution under subsection (b).

(b) On June 30 and on December 31 of each year the treasurer of state shall deposit into:

(1) the family violence and victim assistance fund established under IC 12-18-5-2 an amount equal to eleven and eight-hundredths percent (11.08%);

(2) the Indiana judges' retirement fund established under IC 33-13-8 an amount equal to twenty-five and twenty-one hundredths percent (25.21%);

(3) the law enforcement academy building fund established under IC 5-2-1-13 an amount equal to three and fifty-two hundredths percent (3.52%);

(4) the law enforcement training fund established under IC 5-2-1-13 an amount equal to fourteen and nineteen-hundredths percent (14.19%);

(5) the violent crime victims compensation fund established under IC 5-2-6.1-40 an amount equal to sixteen and fifty-hundredths percent (16.50%);

(6) the motor vehicle highway account an amount equal to twenty-six and ninety-five hundredths percent (26.95%);

(7) the fish and wildlife fund established by IC 14-22-3-2 an amount equal to thirty-two hundredths of one percent (0.32%); and

(8) the Indiana judicial center drug and alcohol programs fund established under IC 12-23-14-17 for the administration, certification, and support of alcohol and drug services programs under IC 12-23-14 an amount equal to two and twenty-three hundredths percent (2.23%);

of the amount transferred by the auditor of state under subsection (a).

(c) On June 30 and on December 31 of each year the auditor of state shall transfer to the treasurer of state one million two hundred thousand dollars (\$1, 200,000) for deposit into the **public defense civil and criminal indigent counsel** fund established under IC 33-9-14.

SECTION 10. IC 34-10-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) If the court is satisfied that a person who makes an application described in section

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1 of this chapter does not have sufficient means to prosecute or defend  
 2 the action, the court: ~~shall~~:

3 (1) **shall** admit the applicant to prosecute or defend as an indigent  
 4 person; and

5 (2) **may** assign an attorney to defend or prosecute the cause.

6 (b) All officers required to prosecute or defend the action shall do  
 7 their duty in the case without taking any fee or reward from the  
 8 indigent person.

9 (c) **The reasonable attorney's fees and expenses of an attorney**  
 10 **appointed to represent an applicant under this chapter shall be**  
 11 **paid from the civil and criminal indigent counsel fund**  
 12 **(IC 33-9-14-1) or from money appropriated to the court:**

13 (1) **appointing the attorney, if the action was not transferred**  
 14 **from another county; or**

15 (2) **from which the action was transferred, if the action was**  
 16 **transferred from another county.**

17 SECTION 11. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 104, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 104 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 2.

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## SENATE MOTION

Mr. President: I move that Senate Bill 104 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Page 1, line 1, delete "THE FOLLOWING ARE REPEALED" and insert "IC 34-10-1-2 IS AMENDED TO READ AS FOLLOWS".

Page 1, line 2, delete "IC 34-10-1; IC 34-10-2." and insert "Sec. 2. **(a) Subject to subsection (d),** if the court is satisfied that a person who makes an application described in section 1 of this chapter does not have sufficient means to prosecute or defend the action, the court ~~shall~~ **may:**

(1) admit the applicant to prosecute or defend as an indigent person; and

(2) assign an attorney to defend or prosecute the cause.

**(b)** All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

**(c) A civil indigent counsel defense fund is established for each court with civil jurisdiction in Indiana. Money appropriated to a court's civil indigent counsel defense fund may be used only for the payment of the reasonable attorney's fees, costs, and expenses of attorneys assigned to represent indigent persons under this section.**

**(d) The court may order the:**

(1) payment of compensation to; or

(2) reimbursement of costs or expenses incurred by;

**attorneys assigned to represent indigent persons under this section only to the extent that money has been appropriated to and is available in the court's civil indigent counsel defense fund.**

**(e) A political subdivision with a court may appropriate money to the court's civil indigent counsel defense fund only after the court has complied with this subsection. The court shall publish notice of the court's request for an appropriation in accordance with IC 5-3-1. The notice must report the amount of the proposed appropriation and the amount expended from the court's civil indigent counsel defense fund in the immediately preceding calendar year. A court's notice under this subsection may be combined with the notice of another court. After the notice is published, the judge of the court shall meet with the fiscal body of the political subdivision in a public meeting. The judge shall present to the fiscal body a summary of the information contained**



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**in the published notice and discuss with the fiscal body the use of money in the court's civil indigent counsel defense fund. After a court has published the notice and met with the fiscal body, the political subdivision may appropriate money to the court's civil indigent counsel defense fund for use in the next calendar year. The appropriation must be adopted by the fiscal body of the political subdivision before the time specified in IC 6-1.1-17-5 for the adoption of the political subdivision's annual budget."**

(Reference is to SB 104 as printed February 23, 2001.)

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 104, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 16-37-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A local health department may make a charge under IC 16-20-1-27 for each certificate of birth, death, or stillbirth registration.

(b) If the local department of health makes a charge for a certificate of death under subsection (a), a one dollar (\$1) coroners continuing education fee must be added to the rate established under IC 16-20-1-27. The local department of health shall deposit any coroners continuing education fees with the county auditor within thirty (30) days after collection. The county auditor shall transfer semiannually any coroners continuing education fees to the treasurer of state.

**(c) If the local department of health makes a charge for a certificate of birth under subsection (a), a two dollar (\$2) civil indigent fee must be added to the rate established under IC 16-20-1-27. The local department of health shall deposit the civil indigent fee in the civil indigent fund (IC 34-10-1-2) not later than thirty (30) days after collection. Fees deposited in the civil indigent fund do not revert to the state.**

**(d)** Notwithstanding IC 16-20-1-27, a charge may not be made for furnishing a certificate of birth, death, or stillbirth registration to a person or to a member of the family of a person who needs the certificate for one (1) of the following purposes:

(1) To establish the person's age or the dependency of a member of the person's family in connection with:

(A) the person's service in the armed forces of the United States; or

(B) a death pension or disability pension of a person who is serving or has served in the armed forces of the United States.

(2) To establish or to verify the age of a child in school who desires to secure a work permit."

Page 1, line 2, delete "Subject to".

Page 1, line 3, delete "subsection (d), if" and insert "If".

Page 1, line 5, delete "court" and insert "court:".

Page 1, delete line 6.

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Page 1, line 7, after "(1)" insert "**shall**".

Page 1, line 9, after "(2)" insert "**may**".

Page 1, line 13, delete "counsel defense".

Page 1, line 14, delete "court with civil jurisdiction" and insert "**county**".

Page 1, line 14, delete "appropriated to a" and insert "**deposited in the**".

Page 1, line 15, delete "court's".

Page 1, line 15, delete "counsel defense".

Page 1, line 17, after "section." insert "**Funds in the indigent civil fund may be disbursed in accordance with rules adopted by the majority of judges having jurisdiction over civil cases in a county.**".

Page 2, line 1, delete "The court may order the:" and insert:

**"(d) The reasonable attorney's fees and expenses of an attorney appointed to represent an applicant under this chapter shall be paid from the civil indigent fund under subsection (c) or from money appropriated to the court:**

**(1) appointing the attorney, if the action was not transferred from another county; or**

**(2) from which the action was transferred, if the action was transferred from another county."**

Page 2, delete lines 2 through 26.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 104 as reprinted February 27, 2001.)

STURTZ, Chair

Committee Vote: yeas 9, nays 1.

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## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 104 be amended to read as follows:

Page 1, line 17, after "civil" insert "**and criminal**".

Page 1, line 17, after "indigent" insert "**counsel**".

Page 1, line 17, delete "(IC 34-10-1-2)" and insert "**(IC 33-9-14-1)**".

Page 2, line 1, delete "civil indigent".

Page 2, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 2. IC 33-9-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The commission shall do the following:

(1) Make recommendations to the supreme court of Indiana concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under IC 35-50-2-9, including the following:

(A) Determining indigency and eligibility for legal representation.

(B) Selection and qualifications of attorneys to represent indigent defendants at public expense.

(C) Determining conflicts of interest.

(D) Investigative, clerical, and other support services necessary to provide adequate legal representation.

(2) Adopt guidelines and standards for indigent ~~defense~~ services under which the counties will be eligible for reimbursement under IC 33-9-14, including but not limited to the following:

(A) Determining indigency and the eligibility for legal representation.

(B) The issuance and enforcement of orders requiring the defendant to pay for the costs of court appointed legal representation under IC 33-9-11.5.

(C) The use and expenditure of funds in the county supplemental public defender services fund established by IC 33-9-11.5.

(D) Qualifications of attorneys to represent indigent defendants at public expense.

(E) Compensation rates for salaried, contractual, and assigned counsel.

(F) Minimum and maximum caseloads of public defender offices and contract attorneys.

(3) Make recommendations concerning the delivery of indigent defense services in Indiana.

(4) Make an annual report to the governor, the general assembly,



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and the supreme court on the operation of the **public defense civil and criminal indigent counsel** fund.

SECTION 3. IC 33-9-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The **public defense civil and criminal indigent counsel** fund is established to receive court costs or other revenues for county reimbursement and administrative expenses. The fund shall be administered by the division of state court administration of the supreme court of Indiana. **Money deposited in the fund under IC 16-37-1-9 may be used only to reimburse a county for expenses related to the assignment of an attorney to represent an indigent in a civil case under IC 34-10-1-2.**

SECTION 4. IC 33-9-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the **public defense civil and criminal indigent counsel** fund for an amount equal to fifty percent (50%) of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought under IC 35-50-2-9.

(b) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the **public defense civil and criminal indigent counsel** fund for an amount equal to forty percent (40%) of the county's expenditures for indigent defense services provided in all noncapital **criminal** cases except misdemeanors.

(c) A request under this section from a county described in IC 33-9-15-1(3) may be limited to expenditures for indigent **criminal** defense services provided by a particular division of a court.

**(d) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the civil and criminal indigent counsel fund for an amount equal to forty percent (40%) of the county's expenditures for civil indigent services under IC 34-10-1-2.**

SECTION 5. IC 33-9-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. If the **public defense civil and criminal indigent counsel** fund would be reduced below two hundred-fifty thousand dollars (\$250,000) by payment in full of all county reimbursement for net expenditures in non-capital **criminal** cases that is certified by the state court administrator in any quarter, the commission shall suspend payment of reimbursement to counties in non-capital cases until the next semi-annual deposit in the **public defense civil and criminal indigent counsel** fund. At the end

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of the suspension period, the state court administrator shall certify all suspended reimbursement. If the ~~public defense civil and criminal indigent counsel~~ fund would be reduced below two hundred-fifty thousand dollars (\$250,000) by payment in full of all suspended reimbursement in non-capital cases, the amount certified by the state court administrator for each county entitled to reimbursement shall be prorated. **However, with the exception of money deposited in the fund under IC 16-37-1-9, the state court administrator may not certify for payment costs arising from the assignment of an attorney to represent an indigent in a civil case unless all reimbursements to counties for expenses incurred in criminal cases can be paid in full.**

SECTION 6. IC 33-9-15-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The board shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal **criminal** defense services to indigent persons:

- (1) Establishing a county public defender's office.
- (2) Contracting with an attorney, a group of attorneys, or a private organization.
- (3) Utilizing an assigned counsel system of panel attorneys for case-by-case appointments under section 9 of this chapter.
- (4) In a county described in section 1(3) of this chapter, establishing a public defender's office for the criminal division of the superior court.

(b) The plan prepared under subsection (a) shall be submitted to the commission.

SECTION 7. IC 33-9-15-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) This chapter does not prevent a court from appointing counsel other than counsel provided for under the board's plan for providing **criminal** defense services to an indigent person when the interests of justice require. A court may also appoint counsel to assist counsel provided for under the board's plan as co-counsel when the interests of justice require. Expenditures by a county for **criminal** defense services not provided under the county public defender board's plan are not subject to reimbursement from the ~~public defense civil and criminal indigent counsel~~ fund under IC 33-9-14.

(b) A judge of a court having criminal jurisdiction may make a written request to the state public defender to provide a qualified attorney for the defense of a person charged in the court with a criminal offense and eligible for representation at public expense if the judge

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determines:

- (1) that an attorney provided under the county public defender board's plan is not qualified or available to represent the person; or
- (2) that in the interests of justice an attorney other than the attorney provided for by the county defender board's plan should be appointed.

The judge shall attach to the request a copy of the information or indictment. Expenditures for representation under this subsection shall be paid by the county according to a fee schedule approved by the commission. These expenditures are eligible for reimbursement from the ~~public defense~~ **civil and criminal indigent counsel** fund.

SECTION 8. IC 33-9-15-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) A county public defender board shall submit a written request for reimbursement to the county auditor. The request must set forth the total of the county's expenditures for indigent **criminal** defense services to the county auditor and may be limited in a county described in section 1(3) of this chapter to expenditures for indigent defense services provided by a particular division of a court. The county auditor shall review the request and certify the total of the county's expenditures for indigent defense services to the public defender commission.

(b) Upon certification by the public defender commission that the county's indigent defense services meet the commission's standards, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of a sum equal to forty percent (40%) of the county's certified expenditures for indigent defense services provided in noncapital cases except misdemeanors.

(c) If a county's indigent defense services fail to meet the standards adopted by the public defender commission, the commission shall notify the county public defender board and the county fiscal body of the failure to comply with the commission's standards. Unless the county public defender board corrects the deficiencies to comply with the standards not more than ninety (90) days after the date of the notice, the county's eligibility for reimbursement from the ~~public defense~~ **civil and criminal indigent counsel** fund terminates at the close of that fiscal year.

SECTION 9. IC 33-19-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state six million seven hundred four thousand two hundred fifty-seven dollars (\$6,704,257) for distribution under

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subsection (b).

(b) On June 30 and on December 31 of each year the treasurer of state shall deposit into:

- (1) the family violence and victim assistance fund established under IC 12-18-5-2 an amount equal to eleven and eight-hundredths percent (11.08%);
- (2) the Indiana judges' retirement fund established under IC 33-13-8 an amount equal to twenty-five and twenty-one hundredths percent (25.21%);
- (3) the law enforcement academy building fund established under IC 5-2-1-13 an amount equal to three and fifty-two hundredths percent (3.52%);
- (4) the law enforcement training fund established under IC 5-2-1-13 an amount equal to fourteen and nineteen-hundredths percent (14.19%);
- (5) the violent crime victims compensation fund established under IC 5-2-6.1-40 an amount equal to sixteen and fifty-hundredths percent (16.50%);
- (6) the motor vehicle highway account an amount equal to twenty-six and ninety-five hundredths percent (26.95%);
- (7) the fish and wildlife fund established by IC 14-22-3-2 an amount equal to thirty-two hundredths of one percent (0.32%); and
- (8) the Indiana judicial center drug and alcohol programs fund established under IC 12-23-14-17 for the administration, certification, and support of alcohol and drug services programs under IC 12-23-14 an amount equal to two and twenty-three hundredths percent (2.23%);

of the amount transferred by the auditor of state under subsection (a).

(c) On June 30 and on December 31 of each year the auditor of state shall transfer to the treasurer of state one million two hundred thousand dollars (\$1, 200,000) for deposit into the ~~public defense~~ **civil and criminal indigent counsel** fund established under IC 33-9-14."

Page 2, line 26, delete "A civil indigent fund is established for each county in".

Page 2, delete lines 27 through 32.

Page 2, line 33, delete "(d)".

Page 2, run in lines 26 through 33.

Page 2, line 35, after "civil" insert "**and criminal**".

Page 2, line 35, after "indigent" insert "**counsel**".

Page 2, line 35, delete "under subsection (c)" and insert "(**IC 33-9-14-1**)".



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Renumber all SECTIONS consecutively.

(Reference is to ESB 104, as printed April 3, 2001.)

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